In the High Court of Punjab and Haryana at Chandigarh.

RSA No.386 of 2003
Date of decision:12.07.2007.

Smt.Jitto ..Appellant.

Versus

Narinder Singh and others ..Respondents.

CORAM
HON'BLE MR. JUSTICE PERMOD KOHLI.

--

Present: Mr.Munishwar Puri, Advocate, for the appellant.

Mr.HS Bath, Advocate, for the respondents.
--

PERMOD KOHLI, J. (ORAL):

After notice of motion, this appeal was taken up for consideration. Learned counsel appearing for the appellant, at the out set, referred to a specific ground of appeal regarding non-consideration of application of the appellant under Order 41 Rule 27 of the Code of Civil Procedure filed on 19.03.2001 before the learned Lower Appellate Court.

I have perused the judgment of the learned Lower Appellate

Court. No reference is even made of such application in the judgment. It has been contended on behalf of the appellant that it was open to the learned Lower Appellate Court to have accepted or rejected the application on merits. Non-consideration of the application has seriously prejudiced the appellant as evidence sought to be tendered by way of additional evidence is relevant and has bearing on the outcome of the issues involved in the case. The other side has not been able to rebut this fact of filing of an application

under Order 41 Rule 27 of the Code of Civil Procedure.

In view of the above, without going into the merits of the present appeal, I set aside the judgment and decree dated 01.10.2002 rendered by the learned Lower Appellate Court and remand the case back to the learned First Appellate Court with a direction to consider the application under Order 41 Rule 27 of the Code of Civil Procedure filed by the appellant and based upon the findings on the said application, the appeal be decided afresh on merits in accordance with law.

The parties, through their counsel are directed to appear before the learned District Judge, Amritsar, on 31.07.2007, who may keep the appeal on his own board or assign the same to the learned Additional District Judge for its disposal, as mentioned above.

Appeal stands disposed of.

(PERMOD KOHLI)
JUDGE

July 12, 2007
BLS